

## **REMARKS**

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks. Claims 7, 9-18, 28-33, 38-44 and 46-76 are pending in the application. New claims 73-76 are supported, for example, by Figures 1A and B.

The pending claims have been rejected for obviousness-type double patenting over claims 1-28 of U.S. 6,180,062. A terminal disclaimer is filed herewith. Applicants are not conceding the absence of any patentable distinction between the present claims and those of the patent.

Claims 50 and 69-71 have been rejected as anticipated by Davis or Ebersole. Applicants respectfully traverse this rejection.

Davis discloses an indicator device in which an embossed synthetic plastic sheet with a syringe-like cavity (member 12) and a planar backing sheet 11. A stripe of indicator composition 16 is printed on the backing sheet at a position corresponding to the entire length of the cavity.

Claim 50 requires a main body, a suction pressure generator comprising a chamber formed in the main body and a flexible cover on the main body. Davis does not include a chamber for a suction pressure generator formed in the main body. Claim 50 further requires an analytical section formed in the drawing channel between the suction generator and the opening. Davis discloses a single stripe of indicator material extending from the opening all the way to the bulb of the syringe-like cavity. Therefore, there is no analytical section between the suction pressure generator and the opening as required by claim 50.

Ebersole is directed to a rapid assay processor. As seen in Figure 1, the device of Ebersole is a relatively large scale unit with vacuum, reagent and wash lines and controller unit. The device of Ebersole therefore clearly does not include a main body dimensioned to be manipulated by hand as required by claim 50. In addition, even if it were proper to consider to the receptacles 36 as individual devices that could be considered separately, these elements of Ebersole do not meet the requirements of claim 50. The receptacles 36 take the form of a pipette having a flexible bulbous portion 38. This element of Ebersole has a one piece construction. See column 9, line 11. The reference cannot be interpreted to include both a chamber for a suction pressure generator formed in the main body and a flexible cover for the main body as required by claim 50. New claims 74 and 76 recite additional features that are not seen in Davis or Ebersole and are even further removed from the references than is claim 50.

Claims 51-53, 60-64, 66-68 and 71 have been rejected as obvious over Davis or Ebersole. These claims are allowable for at least the same reasons as claim 50 discussed above. Applicants are not conceding the relevance of Davis and Ebersole to the features of these claims.

Claims 9, 12-17, 28-31, 38-44, 46-49 and 56-59 have been rejected as obvious over Davis or Ebersole in view of Apicella. Applicants respectfully traverse this rejection.

With respect to claims 56-59, Apicella does not remedy the deficiencies of Davis and Ebersole outlined above with respect to claim 50.


Claim 28 and the claims dependent thereon likewise are not suggested by this combination of references. Claim 28 requires a suction pressure generator, a drawing channel having an opening in the main body and an analytical section formed in the drawing channel between the suction generator and the opening. In Apicella, the analytical section 15 is part of the suction pressure generator. There is no opening in the device of Apicella corresponding to that required by claim 28, as Apicella teaches that the cover 19 should be removed to add sample to the cavity 15. See column 4, lines 12-13. Therefore, Apicella does not provide an analytical section between the suction generator and the opening as required by claim 28. As discussed above, Davis likewise does not provide an analytical section between the suction generator and the opening, and Ebersole does not include a main body dimensioned to be manipulated by hand as required by claim 28. Therefore, the combination of Apicella with either Davis or Ebersole does not suggest the invention of claim 28. The dependent claims, such as claim 40 and claims 73-76, are even further removed from the references.

In view of the above, favorable reconsideration in the form of a Notice of Allowance is requested.

Respectfully submitted,

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